

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

ALPHA 2 (A2),

Plaintiff,

v.

Case No. 2:16-mc-00044
Judge Sargus
Magistrate Judge McCann King

WARDEN RICK CHUVALAS,

Defendant.

REPORT AND RECOMMENDATION

Larry E. Ealy, a state prisoner, has submitted for filing, without prepayment of fees or costs, a complaint alleging violations of the United States Constitution by prison officials.

Because of his repeated filing of frivolous litigation, Mr. Ealy has been denied the right to proceed *pro se in forma pauperis* in this District without the express prior written permission of the Chief Judge. *State of Ohio v. Ealy*, 1:09-cv-245, 1:09-cv-246, 2009 WL 1118704 (S.D. Ohio Apr. 24, 2009). Mr. Ealy has not secured that prior written permission of the Chief Judge.

Moreover, Mr. Ealy's application for leave to proceed *in forma pauperis* is not accompanied by the certified copy of his prison trust fund account statement required by 28 U.S.C. § 1915(b).

Finally, it appears that, if permitted to proceed, Mr. Ealy would attempt to pursue claims based - not on alleged violations of his rights - but on alleged violations of the rights of other individuals.

Under those circumstances, Mr. Ealy would have no standing to pursue the claims sought to be asserted in this action. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

For all these reasons, then, it is **RECOMMENDED** that Larry E. Ealy be denied leave to proceed *in forma pauperis* and that this action be dismissed.

If any party seeks review by the District Judge of this *Report and Recommendation*, that party may, within fourteen (14) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy thereof. Fed. R. Civ. P. 72(b).

The parties are specifically advised that the failure to object to the Report and Recommendation will result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court. *See, e.g., Pfahler v. Nat'l Latex Prod. Co.*, 517 F.3d 816, 829 (6th Cir. 2007) (holding that "failure to object to the magistrate judge's recommendations constituted a waiver of [the defendant's] ability to appeal the district court's ruling"); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005) (holding that defendant waived appeal of district court's denial of pretrial motion by failing to timely object to magistrate judge's report and recommendation). Even when timely objections are filed, appellate review of issues not raised in those

objections is waived. *Robert v. Tesson*, 507 F.3d 981, 994 (6th Cir. 2007) (“[A] general objection to a magistrate judge’s report, which fails to specify the issues of contention, does not suffice to preserve an issue for appeal”) (citation omitted)).

s/ Norah McCann King =
Norah McCann King
United States Magistrate Judge

July 26, 2016